

PROCLAMATION

No. 17546

By The

Governor of the State of Texas

Executive Department
Austin, Texas
June 11, 1937.

To All to Whom These Presents Shall Come:

I am disapproving and vetoing House Bill No. 402, appropriating \$1,237 out of the available school fund to the Crane County Independent School District, for the following reasons:

House Bill No. 402 is a bill passed by both houses of the Legislature, making an appropriation of the sum of \$1,237 out of the available school fund "to pay Crane County Independent School District for an overpayment of interest on school bonds made by said District . . ."

In 1927, Crane County Common School District No. 1 issued a series of bonds in the principal amount of \$50,000, bearing interest at the rate of 5½% per annum. The bonds provided for payment of interest semi-annually, on the 7th day of March and on the 7th day of September of each year. Further, the bonds provided for optional redemption thereof after a certain number of years from their date; said bonds were eligible for redemption on September 7, 1935. The State Board of Education purchased these bonds and they were owned by the Permanent School Fund from date of their issuance until July 31, 1936, at which time they were refunded as hereinafter stated.

On August 7, 1935, the Board of Trustees of Crane County Independent School District (which succeeded Crane County Common School District No. 1) notified the State Treasurer that they had elected to exercise their option of redemption, and that the said Crane County Common School District Bonds outstanding would be redeemed and paid at the office of the State Treasurer on September 7, 1935.

Upon the advice of the Attorney General and of the State Board of Education, the Treasurer notified the School District that unless the bonds were called for redemption payable with moneys accumulated in the interest and sinking fund for the particular bonds called for redemption, that the bonds could not be redeemed and paid. There is no record of any tender of payment by the district, and the Treasurer's office recalls none.

On March 7, 1936, the District was notified by the Treasurer that it had an interest payment of \$1,237.50 due, and on March 16, 1936, the District remitted to the Treasurer the sum of \$1,237.

On or about the 1st day of June, 1936, the Supreme Court in the case of Dallas County v. Lockhart, State Treasurer, 96 S. W. (2) 60, held that municipalities were entitled to exercise a bond option for the purpose of refunding the bonded indebtedness, and that the Treasurer should surrender bonds called for redemption for that purpose. This holding was in conflict with the advice of the Attorney General and of the State

Board, which prompted the Treasurer to inform Crane County Independent School District that it could redeem only in the event that the District could pay the bonds out of the sinking fund created for the retirement of the bonds.

Thereafter, on or about July 30, 1936, the Attorney General approved the refunding issue of the Crane County Independent School District; this issue was dated September 7, 1935; it was provided in the bonds that interest should be payable semi-annually, on or about the 1st day of December and the 1st day of June of each year. At the time of the approval of the refunding issue by the Attorney General, therefore, there were two interest coupons which had become due by their terms before the issuance of the bonds, and the Attorney General disapproved the two coupons.

The refunding issue was registered by the Comptroller on July 31, 1936, and on the same date the Crane County Common School District No. 1, 1927 series bonds owned by the Permanent School Fund were cancelled. (See Vol. 40, Bond Register, Comptroller's Department, page 104, Register No. 16,459).

It is evident that the School District was not compelled to pay interest on two issues by the refusal of the Board to give its permission to the proposed refunding operation. The District had the use of the money of the Permanent School Fund during the period between September 7, 1935, and July 31, 1936, on which latter date the refunding bonds of the district were issued.

If this bill is approved, the effect of the same will be to give to the District the use, free of interest, of the \$45,000 of the Permanent Free School Fund for the period between September 7, 1935, and July 31, 1936. Insofar as the District is concerned, the Board's refusal to sanction the refunding of its indebtedness as of September 7, 1935, was to compel the District to pay a higher rate of interest than it would have paid had it issued refunding bonds on said date.

I do not believe that the District should be allowed the free use of the \$45,000 belonging to the Permanent School Fund for the period of time elapsing between September 7, 1935, and July 31, 1936. As a matter of law, it is my opinion that unless a tender of payment was in fact made on September 7, 1935, the bill would contravene the provision of the Constitution prohibiting grants of public money to municipal corporations. (Section 51, Article III.) At any event, however, I do not think that the District is equitably entitled to more than the difference in the rate of interest for the period involved: the bill proposes to refund all of the interest.

Secondly, I doubt seriously the validity of the bill for another reason. Upon notice by the Treasurer, the District paid into the Available School Fund the \$1,237 which this bill proposes to refund out of the Available School Fund. The money therefore became a part of the said fund.

Section 5, Article VII, of the Constitution, provides that:

"The available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; . . . ; and the available school fund herein provided shall be

distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law."

This bill, in my judgment, is an attempt to appropriate and distribute a portion of the available school fund in a manner inconsistent with the constitutional provision quoted. The appropriation is not a distribution according to scholastic population, and is not, in my judgment, an appropriation for the support of the public free schools of Crane County.

Accordingly, this bill is vetoed and disapproved, and a copy of this proclamation is ordered to be attached to the bill and filed with the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of State to be impressed hereon at Austin, this the 11th day of June, A. D. 1937.

JAMES V. ALLRED
Governor of Texas

(Seal)

By the Governor

(Signed) Edward Clark
Secretary of State